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at least partially encapsulating the support members, the containers and the top pad with a film.

#### REMARKS

This Amendment is in response to the Office Action mailed January 9, 2003, wherein claim 11 was rejected under 35 U.S.C. §112, first paragraph; claim 14 was rejected under 35 U.S.C. §112, second paragraph; claims 1, 2, 4-9, 13-15 and 18 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. 5,370,233 to Schutz et al (Schutz); claims 1, 2, 4, 5, 10-15 and 18 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. 4,919,270 to Govang et al (Govang); and claims 3, 16, 17, and 19 were said to be allowable if rewritten in independent form.

The specific rejections/objections to the claims are addressed in the following paragraphs which are presented in order corresponding to the order the rejections were presented in the Office Action.

1)

In the Office Action claim 11 was rejected to under §112, first paragraph as being unclear. Applicants have amended claim 11 as suggested by the Examiner. Claims 13 and 14 were also said to be inaccurate. Applicants have amended claims 13 and 14 to more clearly differentiate the top pad area from the combined support member area. No new matter has been added.

2)

In the Office Action claim 14 was rejected under §112, second paragraph as being unclear as to what is being claimed in claim 14 by the limitation, "the top pad is about 5 to about 40 percent greater than or less than the combined support member area." As indicated above claim 14 has been amended to clarify the limitation of the claim and to differentiate the top pad

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area from the combined support member area.

3)-6)

In the Office Action claims 1, 2, 4-9, 13-15 and 18 were rejected under §102(b) as being anticipated by Schutz and claims 1, 2, 4, 5, 10-15 and 18 were rejected under §102(b) as being anticipated by Govang. The Office Action also indicated however that claims 3, 16, 17 and 19 would be allowable if rewritten in independent form.

Applicants acknowledge the recognition of allowable subject matter in the instant claims.

Applicants have amended independent claim 1 to include all of the elements of allowed claim 3 as well as intervening claim 2, and cancelled claims 2 and 3 from the Application. Claims 4-17 all depend directly or indirectly from claim 1.

Applicants have amended claim 18 to include all of the elements of allowed claim 19 and canceled claim 19 from the Application.

In light of the amendments to the claims the §102 rejections based on Schutz and Govang are rendered moot. Applicants reserve the right however, to prosecute the subject matter of the cancelled claims in one or more subsequent Continuation Applications.

#### **FORMALITIES**

If an extension of time is required to make this response timely and no separate petition is enclosed, Applicants hereby petition for an extension of time sufficient to make the response timely. In the event that this response requires the payment of government fees and payment is not enclosed, please charge Deposit Account No. 22-0350.

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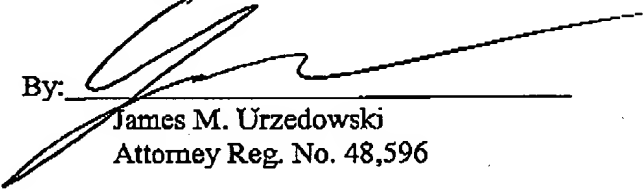
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CONCLUSION

In view of the foregoing it is believed that the present application, with claims 1, 4-17 and 18 is in condition for allowance. Early action to that effect is earnestly solicited.

Respectfully submitted,  
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**MARKED COPY OF THE AMENDED PORTIONS OF THE SPECIFICATION**

Please replace the paragraph starting on line 13 of page 7 with the following amended paragraph:

— As may be seen in FIG. 5, the container package assembly 10 may include more than one level or layer of trays 12. In the embodiment shown in FIG. 5, four trays 12 of containers 14 are arranged in two levels: a top level 40 and a bottom level 42. The bottom level 42 comprises two trays 12 of containers 14 arranged horizontally adjacent to one another in the side-by-side fashion previously described. The top level 40 comprises two more trays 12 of containers 14. The trays 12 of the top level 40 are placed directly on top of the containers 14 of the bottom level 42. Optionally, a top pad may be inserted between the containers 14 of the bottom level 42 and the trays 12 of the top [lever] level 40.--

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### **MARKED COPY OF THE AMENDED CLAIMS**

Please cancel claims 2, 3 and 19 from the Application without prejudice or disclaimer.

Please cancel claim 1 and replace it with the following amended claim:

1. (Amended) A container package assembly comprising:
  - a first support member and a second support member, the first support member having a first side, the second support member having a second side, the first support member and the second support member being arranged along a common plane wherein the first side is immediately adjacent to the second side, each of the support members further comprise at least one wall, the at least one wall having a wall length, the at least one wall being substantially perpendicular to the support surface of the support member, the at least one wall tapering in height along one or more portions of the wall length from a first height to a second height, the first height being greater than second height;
  - a plurality of containers, the plurality of containers positioned on a support surface of the first support member and the second support member;
  - a top pad, the top pad positioned on top of the containers, the top pad extending over at least a portion of each of the containers; and
  - a film;
  - the support members, the plurality of containers and the top pad comprising an assembly, the assembly at least partially encapsulated by the film.

Please cancel claim 11 and replace it with the following amended claim:

11. (Amended) The container package assembly of claim 1 further comprising a third support member and a fourth support member, the third support member having a third side, the fourth support member having a fourth side, the third support member and the fourth support

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member being arranged along a second common plane, wherein the third side is immediately adjacent to the forth side, the second common plane being substantially parallel to the first common plane and positioned thereunder;

[some of the plurality of] additional containers being positioned on a support surface of the third support member and the forth support member;

the first support member having a first lower surface supportively engaged by the [plurality of] additional containers positioned on the support surface of the third support member, the second support member having a second lower surface supportively engaged by the [plurality of] additional containers positioned on the support surface of the forth support member.

Please cancel claim 13 and replace it with the following amended claim:

13. (Amended) The container package assembly of claim 1 wherein the top pad comprises an area, [the top pad area,] the first support member and the second support member comprising a combined support member area, the top pad area being [about 5 to about 40 percent] greater than or less than the combined support member area.

Please cancel claim 14 and replace it with the following amended claim:

14. (Amended) The container package assembly of claim 13, wherein the top pad is about [5 to about 40] 75 percent greater than or less than the combined support member area.

Please cancel claim 18 and replace it with the following amended claim:

18. A method for packaging a plurality of containers comprising the steps of:

providing a plurality of support members including a first support member and a second support member adjacent the first support member, the first and second support members having a plurality of containers disposed thereon, each support member having three sidewalls and an open side;

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placing a top pad on top of the containers, the top pad extending over at least a portion of each of the containers; and

at least partially encapsulating the support members, the containers and the top pad with a film.